Ironwood Plastics, Inc. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL–CIO. Case 30–CA–16852–1

November 10, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On June 30, 2005, Administrative Law Judge Michael A. Rosas issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief. The Respondent also filed cross-exceptions and a supporting brief to which the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[1] and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Ironwood Plastics, Inc., Ironwood, Michigan, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act."

Dated, Washington, D.C. November 10, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Connolly, Esq., for the General Counsel.

Ann I. Mennell, Esq. (Foley & Lardner, LLP), of Milwaukee, Wisconsin, for the Respondent.

Diana L. Ketola, Esq., of Traverse City, Wisconsin, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Ironwood, Michigan, on February 16–17, 2005. The charge was filed on June 1, 2004, by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL–CIO (Union) and amended

[1] No exceptions were filed to the judge's findings that the Respondent violated Sec. 8(a)(1) by threatening employees with loss of their jobs and other unspecified reprisals for engaging in union or other protected concerted activities, restricting employees' exercise of their Sec. 7 rights, interrogating employees about their support for a union, and engaging in surveillance of the employees' union activities. Exceptions were also not filed to the judge's dismissal of complaint allegations that the Respondent violated Sec. 8(a)(1) by assisting an anti-union employee, and by soliciting grievances.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We agree with the judge's finding that the Respondent's discharge of employee Jodi Bennetts did not violate Sec. 8(a)(3) and (1) of the Act. Assuming arguendo that the General Counsel met his initial burden to demonstrate that the discharge was motivated by antiunion animus, we find that the Respondent met its burden of proving by a preponderance of the evidence that it would have terminated Bennetts even in the absence of her union activities. *Wright Line*, 251 NLRB 1083(1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). We also agree with the judge's implicit finding that Bennetts' discipline and suspension on April 20, 2004, did not violate the Act.

Finally, as to the denial of Bennetts' leave request, we agree with the judge that the General Counsel did not make an initial showing that this denial was motivated by union animus.

Member Liebman concurs in the dismissal of the allegations regarding the denial of Bennetts' leave request and her discipline, suspension, and discharge. In her view, the General Counsel clearly met his initial burden to show unlawful motivation for each act of alleged discrimination. Nevertheless, while the case is close, a preponderance of the evidence shows that the Respondent would have denied Bennetts' leave request, disciplined and suspended her, and ultimately discharged her, even in the absence of her union activity.

[4] The judge recommended that the Board issue a broad order requiring the Respondent to cease and desist from violating the Act "in any other manner." We find that a broad cease-and-desist order is not warranted in this case. Accordingly, we shall substitute a narrow cease-and-desist order requiring the Respondent to cease and desist from violating the Act "in any like or related manner." See *Hickmott Foods*, 242 NLRB 1357 (1979). There is no need to similarly modify the judge's notice, because it already contains narrow cease-and-desist language.

July 19, 2004.[1] On August 31, the Regional Director for Region 30 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The Respondent filed an answer on September 14, denying that it violated the Act. The hearing, initially scheduled for December 16, was rescheduled on November 19 to February 16, 2005.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Ironwood, Michigan, manufactures plastic parts for automotive, military, and electrical connector customers. In the course and conduct of its business operations, the Respondent annually sells and ships materials valued in excess of $50,000 directly to customers located outside the State of Michigan. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Respondent's Operations

The Respondent produces custom plastic products from injection molds at two facilities. One of its facilities is located in Ironwood, Michigan, and employs approximately 140 individuals. The other facility is located in Two Rivers, Wisconsin. The Respondent is owned by Gordon Stephens and his sons, Mark, Scott, and Robert. Mark Stephens is vice president of the Ironwood Division, Scott Stephens is vice president for administration, and Robert Stephens serves as a project manager.[2]

On April 1, the Respondent converted to a team-based organizational structure. Each team is assigned a team leader. Team leaders report to production operations manager Mark Niemi.[3] Each team is responsible for the production of certain parts and there are three daily shifts for each team. Each shift is assigned an assistant team leader (ATL). ATLs are supervisors within the meaning of the Act. ATLs, along with team leaders, begin each workday with a production meeting that sets the work schedule for the day. ATLs also train employees, utilize independent judgment, counsel employees, participate in counseling sessions, and approve leave. In situations where management does not direct the particular work tasks for employees, the ATL takes the initiative of assigning the work.[4]

B. Bennetts' Work History

Jodi Bennetts (Bennetts), the discriminatee, was hired by the Respondent in June 2000 as a production employee. After a few months, she became a product inspector. In July 2001, she became a section leader. Bennetts worked as a section leader until November 2003, when she took a special assignment under Julie Sexton's supervision. In March 2004, that assignment ended and Bennetts was offered the newly-created ATL position. She initially accepted the offer, but changed her mind and resumed the position of product inspector. Throughout her employment by the Respondent, Bennetts was a competent, knowledgeable employee. During the relevant time period of March 2003 to April 2004, however, she was disciplined for inappropriate behavior on several occasions.

1. Oral warning on March 4, 2003

On March 4, 2003, Bennetts received an oral warning from her supervisor, Elizabeth Erikson, for excessive talking with another employee, Chuck Suzik. When presented with a standard company form confirming the oral warning, Bennetts refused to sign and told Erikson that a double standard was being applied because other employees talked during worktime. At that time, she also told Erikson that her conversations with Suzik were all work-related. In fact, they were not and the discipline was justified. Bennetts was told that her next violation would result in a written warning. After that discipline, Bennetts' on-the-job conversations with Suzik "toned down a little bit."[5]

2. Written warning on November 21, 2003

On November 21, 2003, Bennetts received a written warning from Erikson stating, in pertinent part, that "[e]mployee will page a mold tech for a press problem (does not try to solve problem 1st) and if amt does not respond she leaves the press down—is unwilling to handle minor problems and always seeks to shut jobs down. Makes side comments to others about other employees. Employee undermines my supervision and makes belittling comments about my lack of knowledge in areas pertaining to technical skills and decisions that I make as supervisor." As part of her discipline, Bennetts was instructed to follow the Respondent's "Guiding Principles of Respect, Trust, Excellence, Communication and Teamwork (the guiding principles)." Bennetts disagreed with this discipline as noted in the "employee comments" section of the form. Scott Stephens, who participated in the disciplinary meeting, stated on the form that Bennetts' next disciplinary step would be "[s]uspension or termination depending in severity." On the same date, Niemi wrote an e-mail to Scott Stephens stating, "Scott, Liz just filled

[1] All dates are in 2004 unless otherwise indicated.

[2] The Respondent's organizational chart lists the three Stephens' brothers as copresidents, but also refers to Mark Stephens and Scott Stephens as vice presidents for their respective functions. (R. Exh. 7.)

[3] Tr. 155–158; GC Exh. 6.

[4] ATL Kyle Ramme's testimony clearly established that the Respondent considered the position supervisory. He also testified that, during the union campaign, either his team leader, John Lorenson, or Mark Niemi, the production manager, instructed him as to what he could and could not say to employees. (Tr. 128–135; GC Exh. 14.)

[5] I found Bennetts' testimony credible on this and most other issues. She conceded that she was not involved in any union-related activity at the time, her conversations with Suzik were not all work-related, and they were, in fact, involved in a romantic relationship. (Tr. 39–40, 210–212; R. Exh. 1.) In light of these concessions, I disagree with the Respondent that Bennett's denial of the affair to a supervisor she did not like, as well as the affair itself, detract from her credibility.

me in on the problem from yesterday. If Jodi has such HUGE problems with authority and teamwork, can we just accept her resignation? I have great concerns about her fitting into our new consensus based team decision making process."[6]

After receiving the November 21, 2003 written warning from Erikson, Bennetts spoke with Sexton and asked to transfer to her team because she was afraid she would be fired if she kept working under Erikson's supervision. Sexton, impressed with Bennetts' knowledge of plant operations, felt that she may have been paired with the wrong supervisor and was optimistic that Bennetts would be able to blend effectively into her team. She accommodated Bennetts' request, transferred her onto her team, and they worked well for several months.[7]

3. Counseling on February 26

On February 26, at Niemi's request and based on her own observations, Sexton counseled Bennetts about excessive talking with Suzik during worktime. Sexton documented that encounter in a memorandum stating that "I spoke with Jodi this morning in regard to excessive talking with Chuck Suzik. I explained that we all need to maintain focus on the job, and any personal conversations need to be limited to lunch breaks or other time which is not 'on the clock' at Ironwood Plastics. Jodi was very professional during this discussion, and agreed to abide by our request."[8]

4. Counseling on March 24

On March 17, Bennetts decided to pull a scraped, but intricate, part of a machine used by her team—the A side of the 1838A tool (the A tool). Prior to taking that action, Bennetts consulted with James Wiemeri, Mo DeYoung, Doug Palmeter, Dave Zelienski, and Dave Simcoe. Upon returning from lunch, Sexton saw Bennetts speaking with Zelienski. Sexton joined the discussion. After Bennetts explained her concern, Sexton asked to see the part in question. Bennetts responded by jumping onto the equipment platform and told Sexton she was "pulling the A side per Dave Zelienski." Sexton took the part and examined it under a microscope. Sexton then asked Simcoe what happened. He was not sure, however, as he had previously checked out the scrapings and determined they did not affect the integrity of the machine. Sexton then spoke with Zelienski and asked if he instructed Bennetts to pull the A tool. Zelienski told Sexton that he advised Bennetts to discuss it with her and that any quality concern should be addressed by the tool room. Sexton then approached Bennetts and directed her to "quantify the defect." Bennetts was unable to do so and told Sexton that "it's your call." Sexton told her "that is correct, put the tool back in the press and get it running."

Concerned that Bennetts took such action at a time when the Respondent was 22,000 parts behind on customer orders, Sexton discussed the incident with her the next morning. Bennetts admitted that she acted in spite of Zelienski's disagreement with her proposed action. Sexton counseled Bennetts that, in similar future situations, she needed to wait for Sexton to return from lunch before shutting down production and determine whether true defects existed by measuring the parts. Sexton did, however, agree with Bennetts that Zelienski's prior inspection of the A tool should have been noted in the job book. Bennetts took the opportunity during this conversation to inform Sexton that she declined the ATL position for the midnight shift, but was willing to work as a team member on that shift. Sexton asked her to reconsider and give her a final answer on March 22. Sexton documented this discussion in a memorandum to Niemi, dated March 18.[9]

On March 22, Bennetts informed Sexton that she accepted the ATL position. The next day, however, Sexton interrupted a conversation between Bennetts and Suzik. Later that day, Bennetts told Sexton that she changed her mind and declined the ATL position. In a counseling report, dated March 24, Sexton wrote that Bennett's change of mind "places the company in a difficult position so close to kick-off. Jodi has indicated a consideration in her decision is a fact that she and I will continue to disagree, as she still contends she made the right call by shutting down the press." Sexton further wrote that Bennetts was reassigned to work on ATL Wiemeri's shift. She was expected to improve her team participation and discussions, follow company policies and instructions from management, comply with prior counseling regarding her worktime conversations with Suzik, and take all production and quality-related issues through the appropriate supervisory chain. Sexton also noted that Jodi Bennetts' failure to meet the "improvements/standards" would require "[s]uspension or termination depending on the severity of the incident." In her written response to Sexton's report, Bennetts disagreed with Sexton as to why she declined the ATL position: "I have brought up certain concerns to my team leaders and other team leaders. . . the answers to my questions and concerns have been very vague and not very positive to me." At that point, Sexton had serious concerns about Bennetts' cooperation in the Respondent's transition to a team-based system.[10]

C. The Anonymous Letter

About a week after being counseled by Sexton on March 24, for declining the ATL position, Bennetts sent an anonymous 2-page letter to Scott Stephens, Mark Stephens, human resources director Theresa Turula, and Niemi. They received the letter on April 3. The first page was a copy of a Teamsters union orga-

[6] I found Erikson's testimony credible and confirmed by Bennetts' concession that she did not like working for Erikson. Bennetts conceded telling Erikson that she got too dressed-up for work, acted like she did not want to get dirty, did not pitch-in enough, and would say "I don't know" a lot. Bennetts also acknowledged the need to abide by the guiding principles and that her next rule violation could result in suspension or termination. (Tr. 45–47, 214–215; R. Exh. 2, 8, 12.)

[7] The testimony of both Bennetts and Sexton was fairly consistent and credible regarding Bennetts' performance and related problems. (Tr. 48–49, 223–224.)

[8] The General Counsel does not contend that this discipline was based on union animus. (Tr. 224–225; R. Exh. 3.)

[9] Sexton's account in the memorandum was not refuted. (Tr. 227–228; R. Exh. 4.)

[10] The counseling report, although written and signed by Sexton, also listed Erikson as Bennetts' supervisor. (GC Exh. 3.) In any event, Bennetts agreed that this incident was unrelated to her support for the Union, confirming Sexton's assertion that Bennetts had a problem with the transition to the new team-oriented system. (Tr. 53, 231.)

nizing flyer.[11] The second page resembled a newsletter with the typed message "Remember this?????? It may be closer than you think!!!!!" The letter did not include a return address and was unsigned.[12] Bennetts was not working with the Union at the time she sent the letter.[13] In addition to Suzik, who helped her send the letter, the only other person who knew that she sent it was Wiemeri. She told Weimeri about the letter at some point prior to April 16.[14]

In response to the anonymous letter, Scott Stephens met with the team leaders and other managers. They discussed the names of employees who might have sent the letter, as well as employees who were dissatisfied. It was widely known, however, that employees were unhappy about recent layoffs and a wage freeze. The meeting concluded with Scott Stephens' directive that team leaders identify and report the names of employees who were unhappy and why. Scott Stephens also explained what conduct was legally appropriate or inappropriate during a union organizing campaign. In response, each team leader interviewed each employee on his or her team and generated a sheet identifying the specific areas of unhappiness.[15]

The Respondent first addressed employees as a group about the letter at the April 15–16 shift meetings. Monthly shift meetings are held to discuss the Respondent's financial performance for the previous month, make announcements, address plant and employee issues, and answer questions.[16] Toward the end of each of the shift meetings, Mark Stephens displayed the anonymous letter on an overhead projector. He was extremely annoyed that someone sent the letter and, referring to a prior union campaign, at the prospect of another union campaign.[17] Mark Stephens asked the employees if they "really think this company can survive this again." He discussed "the customer impact of union activity in our plant," and added that "you guys know how customers feel about this."[18] Indeed, Mark Stephens' statements were consistent with the emphatic matter in which the Respondent made its nonunion status known to potential customers. For example, in its March 1, 2004 response to a question on a TRW Automotive questionnaire as to whether it was a party to a collective-bargaining agreement, the Respondent stated, "Non union!" Similarly, in its August 14, 2002 response to a similar question on a GK Automotive Inc. Supplier Survey as to whether it had any union affiliations, the Respondent stated, "None!"[19]

At the particular shift meetings that they attended, Bennetts, Michael Johnson, David Kantala, and Michael Bennetts heard similar comments by Mark Stephens. Bennetts attended the shift meeting at 3 p.m. on April 15 and heard Mark Stephens say that "the company was still suffering from repercussions from the last union votes. The customers do not like unions. We were just getting customers back from the last union votes. That either way, yes or no, that the company could not afford to have another union vote."[20] Kantala also attended this meeting and heard a similar comment by Mark Stephens: that a union "would do harm to our customers if it came in."[21] Johnson also attended the meeting and heard similar remarks.[22] During the meeting held with his shift the following morning, Michael Bennetts heard Mark Stephens state "that he felt betrayed. He couldn't understand why a union was trying to be organized in

[11] The Respondent was the subject of a union organizing campaign in 1996. The union lost the election in September 1996. (Tr. 168.)

[12] Tr. 57, 71; GC Exh. 2.

[13] Bennetts conceded that she was not working with the Union at the time. (Tr. 18.)

[14] The General Counsel objected when Wiemeri was asked whether Bennetts ever told him that she sent the letter. The question was leading, the objection was sustained and the answer stricken. Although the question was not rephrased, the issue is an important one. On further reflection, the objection is overruled and Wiemeri's denial is included in the record. I did not, however, find Wiemeri credible since his testimony seemed overly rehearsed and protective of the Respondent. He was asked if he was aware of union activity in 2004 and went beyond the scope of the "yes or no" question to note that he became aware of it *after* Bennetts' departure. Moreover, Wiemeri, a 17-year employee of the Respondent, testified that he was not "familiar with any union organizing" prior to May 2004, even though there was a bitter campaign in 1996. (Tr. 375–376.) On the other hand, Bennetts was credible on this issue. I did not, however, rely on her speculation that Wiemeri "may have told other members of management." (Tr. 62.)

[15] Scott Stephens was less than credible about the primary purpose of the meeting; he clearly wanted to know who sent the letter and whether it was gaining steam among employees. When asked if team leaders mentioned names at this meeting, he testified that "might" have happened. Scott Stephens also admitted that they speculated as to who sent the letter, and that he directed them to interview their employees and report back. (Tr. 165–168; GC Exh. 25–27.)

[16] The shift meetings generally occur within the same day or the next.

[17] Mark Stephens' testimony reflected utter disdain at the notion that someone would try to unionize his family-owned company after all that it had done for the area. It was an offensive display in which he tried to place his company on a pedestal with condescending remarks about the workers and residents of the upper peninsula of Michigan: "you've all seen and I'm sure made fun of us up here;" and "I can still remember fricken General Motors walking in the door, coming up here to see a bunch of Upers in Ironwood, Michigan." (Tr. 354–356.)

[18] Mark Stephens testified he was "sure [he] said other things," but these statements were all he could remember. (Tr. 340–342; GC Exh. 7.) In support of his assertion, he relied on records indicating that customer sales decreased 23 percent in the months following the 1996 union election. There is no indication, however, that the Union prevailed in that election.

[19] R. Exhs. 24 (p. 2) and 27 (p. 11).

[20] This finding is based on the credible testimony of Bennetts. (Tr. 21–22.)

[21] Kantala's testimony was credible and fairly consistent with Bennett's testimony. (Tr. 92.)

[22] Johnson had no current recollection as to what Mark Stephens said, but attributed that to a diminished capacity over the past year. (Tr. 103–104.) He did recall, however, a subsequent interview on June 22, with a Board agent in which he needed "quite a bit of prompting" in order to recall the facts and signed an affidavit regarding the April shift meeting. (Tr. 110.) Johnson authenticated his signature on the affidavit, which he believed to be correct at the time he signed it. (Tr. 102–104, 112.) Accordingly, a portion of Johnson's affidavit was read into the record, as past recollection recorded, in accordance with Fed. R. of Evid. 803(5). *J.C. Penney Co. v. NLRB*, 384 F.2d 479, 484 (10th Cir. 1967). I found Johnson credible as to the circumstances of the affidavit and his diminished capacity, but gave his testimony, based on his past recollection recorded, limited weight and only to the extent that it corroborated the testimony of Bennetts and Kantala. (Tr. 118.)

the plant. He was very upset with it and he would not have anything to do with a union in the plant."[23]

D. The April 20, 2004 Suspension and Employee Counseling Report

In the meantime, Bennetts' behavior during the weeks following her March 24 counseling did not improve. Sexton observed that Bennetts became boisterous on the plant floor, was singing and playing music loudly, and disrupting other employees. Sexton felt that Bennetts' violated the Respondent's guiding principle of respect for coworkers. The last straw was when Bennetts circumvented the chain of leadership and went straight to Scott Stephens to report that someone changed her written entries.

On April 15, as part of her regular duties as a product inspector, Bennetts measured several products and took notes in order to complete a quality control report. She provided these measurements to her ATL, who was responsible for entering this information in the Respondent's data system. The following day she repeated the process, but noticed that the computer data was different from the information she entered the previous day. Bennetts printed a copy of the report and went directly to Scott Stephens' office. She told him that she was concerned because her data indicated that the part in question was defective and this information was not reflected on the computer printout. In the course of this conversation, she added that this was an example of concerns shared by many employees. Those issues included inadequate training of ATLs and team leaders, and inadequate help for employees on the production floor. Scott Stephens responded that if Bennetts was going to be a spokesperson for other employees she was going to "get burned." Bennetts then asked him if she could take 3 days of personal leave to "clear her head." Scott Stephens denied the request because she "would just come back to the same situations and problems." Bennetts then resumed working.[24]

Sexton felt that Bennetts' action in going straight to Scott Stephens violated the guiding principles of communication and teamwork.[25] After discussing these issues with Scott Stephens and Niemi, Wiemeri and Sexton authored a counseling report, dated April 16, and gave it to Scott Stephens. It stated:

> Jodi opened an SPI file and found that her dimensional results had been changed. She printed the file and took the information up to Scott Stephens as opposed to questioning her ATL/TL responsible for the team. This is a clear violation of her counseling report from 3/24/04 which states:
>
> Jodi must take all production concerns and quality related questions through the appropriate chain of leadership in regard to her High Impact Work Team with Jim as her supervisor, and me as her team leader. In cases where she is asked to work outside her core team, this requirement also applies to the ATL/TL for the area in which she is assigned."

In regard to our guiding principles, Jodi has failed to abide as follows:

> She has failed to treat her fellow team members in a professional and polite manner as is evidenced by her relatively raucous and disruptive behavior.
>
> She has not maintained the commitments she had previously made to the team concept in relation to her position as an ATL.[26]
>
> She has failed to keep the team leadership informed of her recent concerns and has not worked to resolve these concerns in a professional manner. Jodi tends to share her frustrations in an attempt to gain sympathy from co-workers who should not be involved in the issue(s).
>
> Jodi seems to be working against the team concept as opposed to embracing the potential of the work we can do together.

The counseling report listed 4 points for expected improvement and/or future standards:

> Jodi must adapt to the team environment as a value added contributor to the goals and objectives of the team as set forth on her performance agreement.
>
> Jodi must remain focused on the work she is performing, and after verification of quality concerns address any issues to Jim and or Julie in Jim's absence.
>
> Jodi's time on the job is to be spent on her work assignments exclusively and any interference that she enters into which distracts another team member or any other employee of the company will be grounds for immediate termination.
>
> Jodi must return to work with a fresh perspective in order to order to retain her employment.

The report further stated that Bennetts' failure to meet the "improvements/standards" would require "[i]mediate termination for any minor infraction." The employee comment section on the form was blank.

On April 20, Bennetts met with Scott Stephens, Niemi, Sexton, and Wiermeri. Bennetts was given the April 16 employee counseling report and another one, dated April 20.[27] The April 20 employee counseling report, which listed Sexton and

[23] This finding is based on the credible testimony of Michael Bennetts. (Tr. 79.)

[24] I based this finding on Bennetts' credible testimony. (Tr. 26–27.) Scott Stephens, on the other hand, was evasive about what he said during the conversation. He conceded that Bennetts requested leave, but refused to admit that he denied the request. When pressed on that issue, he simply responded that he "understood she was having an emotional response." (Tr. 185–187.)

[25] This finding is based on Sexton's credible testimony and the Respondent's written guidelines for employee behavior. (Tr. 232–235; R. Exh. 8.)

[26] Sexton credibly testified that she viewed Bennetts refusal to accept the promotion to the ATL position as a violation of the guiding principle of trust, which is defined as being honest and keeping commitments. She was clearly a sore point with Sexton. (Tr. 233–234; R. Exh. 8.)

[27] The form was shown to Bennetts on April 20, but she was asked to sign it or provide her written comments. In any event, the testimony of Bennetts and Sexton was fairly consistent about what transpired at the meeting. (Tr. 28–29, 235–237; GC Exhs. 4–5.)

Weimeri as Bennetts' supervisors, was actually generated by Scott Stephens. That report stated, in pertinent part:

> A significant pattern of counseling indicates substantial dissatisfaction with Jody's behavior and performance. This pattern must cease. These continuous issues have demonstrated Jody's inability to accept criticism and correction in any form. These counselings have consumed an enormous amount of leadership resources and distract from our mission to serve our customers.

The April 20 report essentially differed from the April 16 report by directing Bennetts to take 3 days of unpaid leave and return on April 23 "with a definitive, written plan of how she will modify her behavior to address the company's concerns. Failure to do so, or a substandard response will result in termination." The Respondent's concerns, as listed under "[e]xpected improvement and/or standard for the future," were:

> *Conversations during work time with Chuck Suzik are not allowed.
> *Jody needs to remain focused on her work.
> *Jody must refrain from involving others in her problems during work time.
> *Use the proper chain of command to resolve problems.
> *Stop excusing your own behavior by comparing it to others.
> *Demonstrate ability to accept criticism and respond positively.
> *Adhere to the Guiding Principles at all times.

E. Bennett's Termination

As scheduled, Bennetts met with Sexton, Wiemeri, and Niemi on April 23. She submitted a written plan, dated April 22, responding to the April 20 counseling report. After giving each attendee a copy of the letter, she read it to the group:

> During my 3 day suspension, I came to the realization that my "eratic (sic), off the wall, unacceptable behavior" tends to arise when I feel stressed, inadequate, threatened, or when I feel like I am being put on the spot and watched. These actions also arise in my personal life. I have a tendency to carry my "behavior" to work with me. Most of the time it is a good mood but I know realize that it is not always acceptable. Not all people appreciate my sense of humor and my out of tune singing. I also know that I can be a very impossible person. I may feel that my frustrations and reasonings are justified, but I need to understand that I don't need to react the way I do. If I have a concern or problem I will go through the chain of command.
>
> I know I can be a good leader and I can also be a good leader in bad ways. When I get too loud and talkative, I can see others act up also I don't feel my talking with any employees in a "normal tone" a (sic) bad thing. I don't consider friendship in the work area a bad thing either. Let it be same on opposite sex friendships.
>
> With all this said I will work on controlling my actions and behavior. If I feel stressed or any other feelings (dealing with work) I will talk them thru with Jim or Julie when Jim is not present.
>
> As far as the talking issue, my counselor and I feel that it would be best that I only talk when it is needed, but to still be friendly and considerate to my fellow co-workers. In my counseling report it states "any interference that she enters into which detracts another team member or any other employee of the company will be grounds for immediate termination" and "immediate termination for any minor infrastructure (sic)." With the word minor in that statement I feel for my security in my job. These are the realizations and decisions I needed to come to and make.

Following the meeting, Sexton, Wiemeri, and Niemi purportedly documented the encounter in a memorandum to Scott Stephens:

> The meeting we held with Jodi Bennetts to discuss her employment retention got off to a great start. Jodi had met with her counselor who helped her to come up with a plan for improvement. The letter Jodi prepared included a number of suggestions her counselor had made which could help channel her frustrations and eliminate some of our cause for concern. Jodi expressed her intent to implement this course of improvement.
> Jodi then went on to share the issues which cause much of her frustration. Revisiting several of the examples she had used in our original meeting, the negative behavior became very observant once again. Although Jodi says she can work within the team environment, her actions do not reflect true acceptance of our new direction. This was Jodi's opportunity to sell herself to us, and once again she used the time to vent negative emotion. If she were truly on a new path toward team membership, she should have left the old baggage behind.
>
> Jodi did not convince her operations leadership team that there would be any change in how she felt about our ability to lead this team to ultimate success. She indicated she would be able to refrain from discussing her frustrations, but would like to have the opportunity to use Jim or Julie as a sounding board when she feels the need to "vent." This is another indication of her uncertainty in her ability to fit into the organization without further conflict.
>
> We asked Jodi to go home today. We told her we would call her on Monday [April 26] to schedule a follow-up meeting to determine the final outcome of her situation. We allowed her to take today and Monday as vacation hours.

There was a discussion after Bennetts read the letter. She was praised by the group for admitting her problems and told that she was a valuable employee on the production floor. Bennetts then digressed, however, into old issues and expressed the desire "to vent when she needed to vent." Bennetts was then asked to step outside while they discussed her situation. The group essentially decided that Bennetts should be terminated, but Scott Stephens suggested they hold off until after the weekend. After a while, Wiemeri brought Bennetts back into the

meeting. Nieimi told her that they would need the weekend to consider her letter and arrive at a final decision.[28]

On April 26, Bennetts met with Sexton, Wiemeri, Niemi, and Scott Stephens. They praised Bennetts' abilities in performing certain tasks on the production floor, but explained that her work behavior was unacceptable. Niemi then told Bennetts that her employment was terminated.[29] Bennetts' termination was consistent with the Respondent's disciplinary approach toward similar conduct. From January 1, 2003, to December 31, 2004, the Respondent discharged 25 employees. Six of these terminations occurred between February 2003 and February 2004, and were for conduct and behavioral reasons similar to the grounds for Bennetts' termination.[30]

F. Lorenson's Threat

Michael Bennetts supported the Union and began distributing union literature in the employee workroom during the end of April. John Lorenson has been a team leader at the Ironwood facility since September 2003. He and Michael Bennetts were friends as far back as junior high school, were roommates in college, and continued to socialize with each other thereafter. Michael Bennetts worked on a different shift, but did Lorenson a favor by filling in for one of his employees one day in May.[31] As a sign of his appreciation, Lorenson took Bennetts to lunch during a break. They had just driven back to the Respondent's parking lot when Lorenson told Michael Bennetts that he felt "betrayed" because he helped him get hired a year earlier. Lorenson "didn't feel that the whole thing with the union was going was right," wished that Michael Bennetts "would have held back his feelings a little bit" about the Union, and he "really felt hurt by it." He wanted Michael Bennetts "to choose a way" and told him that he "would know the best way to choose."[32]

G. Sexton's Employee Interrogation, Grievance Solicitation, and Surveillance

On May 3, the Respondent sent a letter sent to each employee. The letter was signed by Mark and Scott Stephens:

> We recently learned that the UAW is trying to form a union here at our Ironwood facility. While there are some who many think having a union will help our employees, many recognize this as misguided.
>
> Many of you lived through the election of 1996. You know the arguments, hard feelings, distrust, politics, dissension and distraction that can be associated with an organizing campaign. You saw first hand how our sales declined as our customers became concerned that our company would become unionized. It has been a long climb to restore relations with them. This past history shows us that our customers may not tolerate even the chance of a disruption in their supply chain.
>
> The next step in this process is that the paid union organizers and your coworkers who support the union will urge you to sign a union authorization card. The union organizers want these cards so they can file a petition for an election. If they cannot get enough cards signed they will go away. Having them go away, we think, is the best result for all of us: You, the company and our community. We urge you to think twice before signing any card. This is an important matter. Do not take it lightly and do not sign a card just to get the person asking you to sign to leave you alone.
>
> We know that we face many issues and challenges. We have tried and will continue to try to address such issues head-on. We do not believe that an outside, third party will help in any way.
>
> If you have any questions about the cards, or any other matter connected with the union, please ask your supervisor or one of us. We will give you the answer, or if we don't know the answer, we will find it and get back to you.[33]

On May 5, Sexton approached her team's employees and asked each if he or she received the May 3 letter and had any questions.[34] Three employees, including Wiemeri, responded that they received the letter and expressed their opposition to a union. Of the three employees, Wiemeri was the "most outspoken and very adamant about his loyalty to the company." When Sexton approached Kantala, she asked him, "What do you think of the union?" He replied that "he'd seen good and bad in the union." Later that day, Sexton e-mailed Scott Stephens describing the responses of her shift employees. In an obvious reference to her inquiry about their union sentiments, her e-mail stated that Kantala and Brenda Jakeway had "no comment." The e-mail ended with a statement, "That's about it for now."[35]

On May 6, Sexton's husband drove her home for lunch. Knowing that a union meeting was scheduled for a local restau-

[28] Bennetts' testimony confirmed the credible testimony of Sexton and Niemi that there was additional discussion after Bennetts read the letter. (Tr. 32–33, 238–241, 371–372; R. Exh. 6.)

[29] This finding is based on the fairly consistent testimony of Bennetts, Sexton, and Niemi. (Tr. 35, 242, 371–372.) Wiemeri also testified, but was not asked about the meeting. (Tr. 374–375.)

[30] Scott Stephens' testimony regarding the Respondent's disciplinary actions in 2003–2004 was supported by abstracts of personnel records and not effectively refuted. (R. Exh. 15–16.)

[31] Neither Michael Bennetts nor Lorenson testified as to the date that the conversation took place. It likely took place shortly after Michael Bennetts placed literature in the lunchroom.

[32] This finding is based on the credible and consistent testimony of both Lorenson and Michael Bennetts. (Tr. 80–81, 360–367.)

[33] GC Exh. 8.

[34] Paragraph 10 of the complaint alleged that Sexton illegally interrogated Kantala on May 3. At trial, the General Counsel moved to amend the complaint to allege that Sexton interrogated other employees and solicited grievances on May 5, and engaged in surveillance of employee union activity on May 6. The motion was granted, but I find that Sexton's discussion with Kantala also occurred on May 5, not May 3.

[35] I did not find Sexton's testimony credible regarding union-related issues. As such, this finding is based on the credible testimony of Kantala, as corroborated by Sexton's e-mail. (Tr. 93; GC Exh. 10.) Sexton's e-mail said that Kantala and Jakeway replied "no comment" when she approached them. It is likely that this answer was in response to a question as to how they felt about the Union. Furthermore, Sexton testified after Kantala and did not refute his version of the conversation. There was insufficient evidence, however, to conclude that the positions stated by the others were anything other than voluntary expressions of opinion about the May 3rd letter.

rant—the Country Kitchen—at 1 p.m., she had her husband drive to the bank across the street from the restaurant. As she sat in the car at approximately 12:30 p.m., Sexton saw Bennetts get out of a vehicle carrying papers and enter the restaurant. Shortly after returning to work, at 1:21 p.m., Sexton sent Scott Stephens an e-mail, entitled, "Jodi." "I still did not want to believe it, but I had to go to the bank at lunch time today, and I saw her walk into the Country Kitchen at 12:30 p.m. with my own eyes . . ." [36] Nearly 2 hours later, Sexton sent Scott Stephens another e-mail that Jarvenpaa had "handed in a list of company supporters" at the Union's meeting. She attributed that information to Weimeri.[37]

H. Ramme's Restrictions on Michael Bennetts' Section 7 Rights

Kyle Ramme was Michael Bennetts' ATL. Ramme knew that Michael Bennetts was a supporter of the Union and that another employee, "Bill," was antiunion. One day during the middle of May, Michael Bennetts and Bill were working alongside each other. Concerned that this arrangement could lead to an argument, Ramme told Michael Bennetts "not to talk about union activity on the plant floor." Michael Bennetts replied that it was appropriate to talk about the Union, since other employees talk about hunting, fishing, sports, and other subjects on the plant floor. Ramme responded that he did not mind Bennetts "talking union activity but just to keep it to a minimum." Ramme did not speak to Bill about this subject.[38]

I. The Respondent's Role in Employees' Antiunion Efforts

In early May, Darrin Jarvenpaa, a mold maker in the tool department, asked Scott Stephens whether it was permissible to obtain a list of employees from the payroll department in order to start an antiunion petition. Scott Stephens authorized Jarvenpaa to proceed. The Respondent applies a "common sense" approach to the type of information disclosed; it would not, for example, disclose the tax withholding and disciplinary records of other employees. In addition, the Respondent periodically posts in the cafeteria lists of employees who are eligible for the Respondent's profit sharing plan. Approximately 85 percent to 90 percent of employees are eligible for profit sharing and would be included in the posting. Employees would be able to photocopy such a list. Also, in February, the Respondent placed an ad in the local newspaper listing every employee's name and thanking them for their service.[39] In any event, there is no instance in which the Respondent has ever denied an employee list to an open union-supporter.

Scott Stephens knew that Jarvenpaa intended to solicit signatures for the petition from other employees during worktime and in work areas. In fact, Jarvenpaa even approached pro-union employees Kantala and Brenda Jakeway.[40] This was consistent with the Respondent's policy of permitting solicitation in work areas during worktime. Such instances included Kantala's solicitation of signatures for his petition to qualify as a candidate for elective office and another petition to place a referendum on the public ballot.[41]

J. The May 24th Annual Meeting

Once a year, the Respondent addresses all employees at an off-site meeting in Ironton. During the Respondent's annual meeting held on May 24, one of the listed "Goals for the upcoming year" in the Respondent's PowerPoint presentation was "Union-free status continues."[42] Mark Stephens was the last manager to speak.[43] He purportedly issued a "challenge" to his employees:

> This was a very very short speech. I started off talking about a wall that we had referenced, back many years ago, between management and employees. And then I went in and talked about how I felt that my goal was to have people that want to work for our company. And I talked in—the way I said my speech was, I listed several things like—and these were all things at that time that we had been hearing. We had been hearing that people were either complaining about or saying behind our backs or whatever. And my speech was a challenge to them saying, you know, man it must just be terrible to have to come to work when you really don't believe Tim Foster's financial numbers that we post every month. And man it must be terrible to have to come back to work when you don't trust management. These were all things that we'd been hearing, that I'd been bringing up and I said, it must be just terrible to come to work when you feel you're afraid to raise your hand at an employee meeting and ask a question for fear of getting fired. And it must be just terrible to – there was two or three other things. I'm not – it must be just terrible to have to come to work with those kinds of things. As short as life is to have to come to work to a place where you just really feel like that. And I ended my speech by saying are you really sure this is the place you want to work, and I repeated it and

[36] Sexton was not credible on this issue either. She knew about the meeting beforehand and heard rumors that Bennetts was involved in organizing activity. Nevertheless, Sexton asserted that she doubted the rumors and found it incredible that Bennetts would be involved. Tr. 244–245: (GC Exh. 11.) Sexton was quite familiar with Bennetts' outspoken and aggressive personality and had no reason to be surprised that Bennetts would be engaged in such activity.

[37] This e-mail, when read together with her earlier one, negates any notion that Sexton stopped at the bank for a reason other than to monitor employees' union activities. (GC Exh. 12.)

[38] I based this finding on the credible testimony of Michael Bennetts. (Tr. 81–82.) Ramme's testimony was limited to paraphrases of what he said (for example, "I basically asked him to . . ." or "It was something along the lines of . . ."). Nevertheless, it was consistent with Michael Bennetts' testimony and he conceded that his comments referred to the Union. (Tr. 138–139.)

[39] Jarvenpaa was not called as a witness, although he is still employed by the Respondent. (Tr. 373.) As there was no request for an adverse inference, however, this finding was based on Scott Stephens' unrefuted testimony. (Tr. 171–172, 264, 267–270, 325; R. Exh. 9–10.)

[40] I based this portion of the finding on Kantala's credible and unrefuted testimony. (Tr. 95.)

[41] Scott Stephens could not recall telling Jarvenpaa whether he could solicit during worktime and in work areas, but the reasonable inference is that he permitted Jarvenpaa to do so because other forms of solicitation were permitted. (Tr. 263–265.)

[42] GC Exh. 20 (p. 49).

[43] Tr. 348–349, 353.

said it pretty loudly. I said, are you really sure this is a place that you really want to work."[44]

Kantala, Johnson, and Michael Bennetts attended the meeting and heard Mark Stephens tell employees that he was aware of a potential union campaign, it was the Respondent's goal to remain union-free, and employees should look for employment elsewhere if they did not trust management.[45]

III. DISCUSSION

The 8(a)(3) and (1) Charges

1. Bennett's termination

The General Counsel asserts that the Respondent violated Section 8(a)(3) and (1) of the Act by disciplining and suspending Bennetts on April 20, and then terminating her on April 26, because she supported the Union and engaged in protected concerted activities. The Respondent contends it was unaware of Bennetts' union activity until after she was terminated and that, in any event, she would have been terminated because of her misconduct.

Under W*right Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the General Counsel has the initial burden to establish that the employee engaged in concerted protected activity, the employer had knowledge of the employee's protected activities, the employer took adverse action against the employee, and there is a nexus or link between the protected concerted activities and the adverse action. If the General Counsel is able to establish a prima facie case by meeting these four elements, the burden shifts to the Respondent to prove, by a preponderance of the evidence, that the adverse action would have been taken even in the absence of the protected conduct. Simply presenting a legitimate reason for its actions is not enough. *T.J. Trucking Co.*, 316 NLRB 771, 771 (1995); *GSX Corp. v. NLRB*, 918 F.2d 1351 (8th Cir. 1990).

The credible evidence established that Bennetts was engaged in concerted activity protected under the Act. Tactically, it seems strange that a potential union supporter would seek to provide advance notice, albeit anonymously, to managers who historically opposed unionization efforts. Coming about a week after she was counseled for declining the ATL position, the letter seemed to serve no purpose other than to taunt management. Nevertheless, the letter provided management with the clear message that the sender of the letter, which was accompanied by a union organizing flyer, was or would be a supporter of union activity.

Scott Stephens' testimony revealed that the Respondent was determined to find out who sent the anonymous letter. The credible evidence also established that the Respondent did, in fact, learn that Bennetts sent it. Bennetts told Wiemeri, a supervisor and member of the management group that decided to terminate her, that she sent the letter. Bennetts was an extremely credible witness throughout most of her relevant testimony; she made no attempt to deny her behavioral indiscretions, misconduct, and failure to work well within a team setting. Wiemeri, on the other hand, was not credible. He was terse in his denial that she told him that she sent the anonymous letter, and his brief testimony was rehearsed and overly protective of the Respondent. It was also clear from Sexton's May 6 e-mail that Wiemeri, an "outspoken" supporter and "adamant about his loyalty" to Respondent, would have passed that information on to his supervisor, Sexton, and other management. *Chugach Management Services*, 342 NLRB No. 69, slip op. at 38 (2004). Furthermore, Scott Stephens' remark that she would "get burned" if she continued to act as a spokesperson for other employees, was also proof that he knew she was engaged in protected concerted activity.

There was no dispute that the Respondent had antiunion animus. At the April shift meetings, Mark Stephens spewed utter indignation at even the notion of a union vote. He told employees he "felt betrayed," was upset, and would not stand for a union in the plant. Mark and Scott Stephens followed-up in a letter, dated May 3, signed by both of them expressing opposition to the Union. At the May annual meeting, Mark Stephens again addressed a potential union campaign by chastising employees who did not trust management. In a reflection of his dismissive approach to the rights of workers to organize, he said he wanted to "challenge" them. Mark Stephens then suggested that they go elsewhere to work if they were not happy with their jobs and management. He said this in a loud voice and obviously calculated to express his opposition to a union campaign. Furthermore, Mark Stephens' statements were consistent with the emphatic matter in which the Respondent highlighted its nonunion status in customers' written applications and surveys.

On April 16, shortly after Bennetts' disclosed to Wiemeri that she sent the anonymous letter, Sexton resumed the disciplinary process with a counseling report. It was issued on April 20, together with a similar counseling report generated by Scott Stephens, which provided for Bennetts' suspension. As a result, Bennetts was suspended for 3 days. She returned, met with Scott Stephens, Sexton, Niemi, and Wiemeri on April 23. The management team was not impressed with Bennetts' plan to remediate her behavioral problems and decided to terminate her. However, Scott Stephens told Bennetts that the group needed to think about it over the weekend. On April 26, the management group told Bennetts she was terminated. Under the circumstances, the Respondent's hostility to the Union and the timing of its action in terminating Bennetts supplies "reliable and competent evidence of unlawful motivation." *Davey Roofing, Inc.* 341 NLRB No. 27, slip op. at 2 (2004).

Since the General Counsel established a prima facie case, the burden of persuasion shifted to the Respondent to prove, by a preponderance of the evidence, that it would have disciplined, suspended, or terminated Bennetts in the absence of her union or concerted protected activity. *Avondale Industries*, 329 NLRB 1064, 1066 (1999).

[44] It was clear from the deliberate pauses and gaps in Mark Stephens' testimony—such as the "several things" that he listed or the things that people were "saying behind our backs or whatever"—that he brought up the issue of a potential union campaign. (Tr. 353–354.)

[45] I based this finding on the credible testimony of Kantala and Michael Bennetts, and corroborated by Johnson's past recollection, as recorded in his affidavit. (Tr. 80, 93, 119–120.)

Bennetts accumulated a significant disciplinary history over her last 14 months of employment. On March 4, 2003, she was orally warned by her supervisor for excessive talking with Suzik. Bennetts was informed that the next violation would result in a written warning. On November 21, 2003, she received a written warning for shutting down the press for minor problems, making personal comments about other employees, and undermining her supervisor's competence. Bennetts was informed that the next discipline would result in suspension or termination. At that time, Niemi suggested in writing to Scott Stephens that Bennetts be asked to resign because of her problems with authority and teamwork.

After receiving the November 21, 2003 warning, Bennetts transferred to Sexton's team. On February 26, at Niemi's request and based on her own observations, Sexton counseled Bennetts about excessive talking with Suzik during worktime. Sexton documented her action in an informal memorandum signed by her and Bennetts. The memorandum reflected Bennetts' agreement to refrain from personal conversations during worktime. Unlike prior disciplinary reports, however, the memorandum did not refer to the next disciplinary step that would follow.

On March 18, less than 1 month later, Sexton counseled Bennetts for prematurely shutting down production without sufficiently coordinating with her and other team members. During this conversation, Bennetts informed Sexton that she declined the ATL position. Sexton asked her to reconsider and give her a final answer on March 22. Sexton documented this discussion in a memorandum to Niemi. Again, the memorandum did not refer to the next disciplinary step that would follow.

On March 22, Bennetts informed Sexton that she accepted the ATL position. On March 23, however, Bennetts changed her mind after Sexton interrupted her conversation with Suzik. Angry that Bennetts' change of mind placed the Respondent in a predicament so close to the start of the new system, Sexton counseled her in writing on March 24. Bennetts was expected to improve her team participation, follow company policies and instructions from management, comply with the prior counseling regarding her conversations with Suzik, and take all production and quality-related issues through the appropriate supervisory chain. The next action if Bennetts did not meet the "improvements/standards" stated was suspension or termination.

During the critical weeks following her March 24 counseling, however, Bennetts' behavior did not improve. It is undisputed that she became boisterous on the plant floor, began singing and playing music loudly, and disrupting other employees. The last straw was when Bennetts circumvented Sexton and Wiemeri on April 15, and went straight to Scott Stephens with a production-related issue.[46] Sexton felt that Bennetts' action in going straight to Scott Stephens violated the guiding principles of communication and teamwork. After discussing these matters with Scott Stephens and Niemi, Wiemeri, and Sexton jointly issued a written counseling report, dated April 16, and gave it to Scott Stephens. The report outlined Bennetts' unacceptable behavior, including unprofessional treatment of other team members, disruptive behavior, failure to accept the ATL position, and failure to keep the team leadership informed of her concerns. The report also stated that she was to improve her behavior: adapt to the team environment; remain focused on her work; refraining from worktime conversations with Suzik; address problems through the proper chain of command; and return to work with a fresh perspective in order to retain her job. Bennetts' failure to meet such "improvements/standards" would require immediate termination for even the most minor infraction.

On April 20, Bennetts met with Scott Stephens, Niemi, Sexton, and Wiermeri. Bennetts was given the April 16 and 20 employee counseling reports. The April 20 employee counseling report, which was generated by Scott Stephens, was similar to the April 16 report, except that it directed Bennetts to take 3 days of unpaid leave and return on April 23 with a written plan as to how she would change her behavior to address the Company's concerns. It was noted that her failure to submit such a plan would result in termination.

As scheduled, Bennetts met with Sexton, Wiemeri, and Niemi on April 23. Bennetts submitted a written plan, dated April 22, responding to the April 20 counseling report. Bennetts explained that she met with her counselor and determined the reasons for her behavior. The group was initially pleased with her plan to correct her behavior. However, Bennetts then digressed, brought up "old baggage," and wanted the opportunity to "vent" whenever she felt it necessary. The group asked her to step outside, discussed the matter, and essentially decided to terminate Bennetts. They told her, however, that they needed a few days to think about it and that she should come back after the weekend. Bennetts met again with the group on April 26, at which time Niemi informed her that she was terminated.

Bennetts' termination occurred shortly after Wiemeri's disclosure to Sexton and other management that she sent the anonymous letter. Nevertheless, her termination was consistent with the Respondent's disciplinary approach toward similar conduct. From January 1, 2003, to December 31, 2004, the Respondent discharged 25 employees. Six of these terminations occurred between February 2003 and February 2004 and were for conduct and behavioral reasons similar to the grounds for Bennetts' termination. There is no doubt that the Respondent's management team was looking for a reason to fire her because of her support for the Union. The Respondent's desire to eliminate Bennetts as a proponent of a prospective union campaign, however, does not, of itself, render her termination illegal. Bennetts provided the Respondent with sufficient cause for dismissal by engaging in conduct that would, in any event, have resulted in termination. Bennetts was given numerous opportunities to correct her behavior and failed to take advantage of them. She was given one last chance to convince the Respondent that she would not be disruptive on the plant floor, but still insisted on the right to vent whenever she felt it necessary. By engaging in misconduct that did not also form the basis for her concerted protected activity, Bennetts pushed the proverbial envelope too far and, in the process, let the Respondent off the

[46] Although I found that Scott Stephens denied Bennetts' leave request during this meeting, there was no evidence from which to infer that such action was motivated by antiunion animus.

hook. Under the circumstances, the fact that the Respondent welcomes the opportunity does not make her discharge unlawful. *Jackson Hospital Corp.*, 340 NLRB No. 71, slip op. at 66–67 (2003). Accordingly, I shall dismiss this complaint allegation.

B. The 8(a)(1) Allegations

Under Section 8(a)(1), it is an unfair labor practice for an employer to "interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7." It is well established that, in determining whether an employer has violated Section 8(a)(1), the test is objective, not subjective. *Multi-Ad Services, Inc.*, 331 NLRB 1226, 1228 fn. 9 (2000). Animus toward the Union is not a required element of Section 8(a)(1) violations. Rather, the test is whether the employer's conduct may reasonably be seen as tending to interfere with Section 7 rights. *Williamhouse of California*, 317 NLRB 699, 713 (1995); *American Freightways Co.*, 124 NLRB 146, 147 (1959).

1. Threats

On April 15, Scott Stephens threatened Bennetts that she would "get burned" if she was going to act as a spokesperson regarding employee issues. The context of Scott Stephens' remark, after Bennetts' explanation that other employees were also concerned about the qualifications of their supervisors and inadequate help with their jobs, was clear: If she insisted in speaking on behalf of other employees, she was likely to incur adverse action from management. Threatening employees with unspecified reprisals if they engage in union or other concerted protected activities has repeatedly been found to have a coercive effect on employee Section 7 activity. *United Scrap Metal, Inc.*, 344 NLRB No. 55, slip op. at 6 (2005). This includes threats that explicitly or implicitly threatening employees with job loss or other negative consequences. *Holsum de Puerto Rico, Inc.*, 344 NLRB No. 85, slip op. at 18 (2005); *Sheraton Hotel Waterbury*, 312 NLRB 304, 305 (1993). Under the circumstances, I find that Scott Stephens's remarks on April 15, violated Section 8(a)(1) by threatening Bennetts with unspecified reprisal if she acted as a spokesperson for other employees' problems.

Mark Stephens was quite assertive in his statements opposing a potential union campaign. At the April shift meetings and the May annual meeting, he was extremely annoyed at the prospect of another union campaign, told employees he felt betrayed, and insisted that the Respondent could not afford to have another union vote. Mark Stephens also noted that customers did not like unions, implied that the plant would lose business if the Union came in, and insisted he would not have anything to do with a union in the plant. At the May meeting, Mark Stephens advised employees to quit if they were not happy with their jobs or did not trust management. Under the circumstances, Mark Stephens violated Section 8(a)(1) in several respects. First, his statement that he felt betrayed implied that employees engaged in union activity were disloyal and conveyed a sense of unspecified reprisals. *Hialeah Hospital*, 343 NLRB No. 52, slip op. at 1–2 (2004). Second, it is illegal to tell employees interested in organizing to quit. *Paper Mart*, 319 NLRB 9, 9 (1995). Third, it was an unfair labor practice for Mark Stephens to predict that the Respondent would lose customers if it affiliated with a union since his statement was not based upon demonstrably probable consequences beyond its control. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). The Respondent introduced evidence that customer sales dropped 23 percent after the 1996 union election. However, there is no indication that the Union prevailed in that election and, given the lack of credibility that I placed in Mark Stephens, I do not rely on his conclusion that the sole reason for a drop in business at that time was the prospect that the Respondent might unionize. Under the circumstances, I find that Mark Stephens' remarks at the April shift meetings and the May annual meeting violated Section 8(a)(1) by threatening employees with the loss of their jobs if they supported union activity.

In mid-May, Lorenson, a team leader, told Michael Bennetts that he felt "betrayed" and "really felt hurt" by his union activity. Lorenson's remark was based on the fact that he helped Michael Bennetts get hired a year earlier and recently learned that he had been distributing union literature in the employee workroom. Lorenson asked Michael Bennetts to hold "his feelings a little bit" about the Union. He told Michael Bennetts "to choose a way" and noted that he "would know the best way to choose." Under the circumstances, Lorenson's statement clearly referred to the future, constituted an implied threat toward Michael Bennett's continued employment, and violated Section 8(a)(1).

2. Restriction on employees' Section 7 rights[47]

Michael Bennetts testified that Ramme, his supervisor, approached him on the production floor and initially asked him not to discuss the Union on the plant floor because he was working alongside an antiunion employee. Michael Bennetts enlightened Ramme as to the fact that other nonwork-related discussions were permitted. Ramme, obviously seeking to avoid disruption of plant operations, explained that he did not mind Bennetts discussing the Union, but "just to keep it to a minimum." As laudable as Ramme's intentions were, his directive that Michael Bennetts keep union-related discussion to a minimum violated Section 8(a)(1) of the Act. It is unlawful for an employer to restrict conversation about union matter during worktime while permitting conversations about other nonwork matters. *Emergency One, Inc.*, 306 NLRB 800, 806 (1992); *Magnolia Manor Nursing Home*, 284 NLRB 825, 829 (1987).

3. Interrogation of employees

The credible evidence established that Sexton approached her team employees on May 5 and asked their opinions of the Union. Kantala's testimony that she approached him and asked his opinion of the Union was corroborated by Sexton's e-mail to Scott Stephens later that day reporting that Wiemeri and two others stated their opposition to the Union. Questioning employees about union activities or union sympathies in a manner that reasonably tends to restrain, coerce, or interfere with Sec-

[47] I do not address the legal consequences of Lorenson's remark that he wished Michael Bennetts "would have held back his feelings a little bit," since the illegal consequences of this statement are subsumed by the prior conclusion that Lorenson's statements constituted an illegal threat.

tion 7 rights constitutes unlawful interrogation. *Rossmore House*, 269 NLRB 1176, 1177 (1984); *NLRB v. Shelby Memorial Hospital Assn.*, 1 F.3d 550, 559 (7th Cir. 1993). Circumstances to be considered in determining whether questioning rises to the level of reasonably tending to restrain include whether the employee was an open and active supporter of the union, the nature of the information sought, the identity of the questioner, and the place and method of interrogation. *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1219 (1985). There is no indication that Sexton knew Kantala's position beforehand, but she sought his opinion of the Union, was a supervisor and conducted the inquiry in the workplace. Furthermore, her inquiry took place a few weeks after Mark Stephens threatening statements at the April shift meetings and 2 days after he sent the May 3 letter reinforcing the Respondent's strong anti-union position. Under the circumstances, Sexton's questioning violated Section 8(a)(1). *Jefferson Smurfit Corp.*, 325 NLRB 280, 285 (1998).

4. Solicitation of grievances

The General Counsel contends that Sexton's May 5 e-mail also reveals evidence that she unlawfully solicited grievances from employees and implicitly promised to remedy their grievances. The Board has held that an inquiry regarding an employee's complaints are prohibited, coercive conduct if it carries an implied promise to remedy those concerns if employees discontinue union activity. *The Jewish Home for the Elderly of Fairfield County*, 343 NLRB No. 117, slip op. at 22–23 (2004); *Orbit Lightspeed Courier Systems, Inc.*, 323 NLRB 380 (1997); *Reno Hilton*, 319 NLRB 1154, 1156 (1995); *Reliance Electric Co.*, 191 NLRB 44, 46 (1971). There is no evidence, however, as to whether Sexton solicited grievances or the complaints were volunteered. Nor is there any evidence of a promise by Sexton to resolve such grievances. Accordingly, I shall dismiss this complaint allegation.

5. Surveillance of employees

An employer's surveillance of union organizing meetings attended by its employees constitutes an unfair labor practice. *Athens Disposal Co.*, 315 NLRB 87, 98 (1994); *Action Auto Store*, 298 NLRB 875, 887 (1990). It is undisputed that Sexton knew when and where the May 6 union organizing meeting would be held and that she drove to the vicinity of the meeting place beforehand and observed Sexton enter the building. Sexton's testimony that it was merely coincidental that she observed Bennetts as she drove to her bank's ATM machine was not credible. She sent two e-mails to Scott Stephens about the union meeting later that day. The first e-mail reported her observation of Bennetts at the meeting location. The second e-mail passed along Wiemeri's report as to what Jarvenpaa's observed at the same meeting. Taken together with her interrogation of employees on the plant floor, they are convincing proof that she went to that location intending to conduct surveillance. Under the circumstances, Sexton's surveillance of employee union activity on May 6 constituted a violation of Section 8(a)(1).

6. Impermissible assistance

The General Counsel also asserts that the Respondent unlawfully assisted Jarvenpaa, an antiunion employee, by providing him with a list of employees and permitting him to collect signatures during worktime. An employer violates Section 8(a)(1) by providing assistance to employees, openly opposed to the Union, that it has not provided to other employees, or would not normally provide. *R.P.C., Inc.*, 311 NLRB 232, 248 (1993), citing *Duncan Heating Corp.*, 254 NLRB 112, 118 (1981). Conversely, it is not unlawful for an employer to provide an employee list when similar lists are readily available to all employees. *Times-Herald, Inc.*, 253 NLRB 524 (1980).

It is uncontroverted that Jarvenpaa requested and received Scott Stephens' permission to obtain an employee list from the payroll department in order to start an antiunion petition. The evidence also established that Scott Stephens knew that Jarvenpaa intended to approach other employees about signing the petition during worktime and that he, in fact, did so. There was no proof, however, that Bennetts or any other prounion employees requested employee information, much less that they were denied. Nor was I swayed by the General Counsel's point that the Respondent would have refused such a request because of its vague "common sense" approach toward the release of employee information. Scott Stephens merely testified that an employee's personal information, such as tax withholding and disciplinary records, would not likely be disclosed to another person upon request. Furthermore, the Respondent's acquiescence in permitting Jarvenpaa to solicit signatures against the Union was consistent with the Respondent's policy of permitting other types of solicitation in work areas during worktime. Finally, the fact that Lorenson violated Section 8(a)(1) by telling Michael Bennetts to minimize union-related discussion on the plant floor is of no consequence here, as there is no indication that Lorenson's misguided attempt to keep order on the plant floor had any reflection on the Respondent's policy toward the dissemination of employee lists. Accordingly, I shall dismiss this complaint allegation.

CONCLUSIONS OF LAW

1. The Respondent, Ironwood Plastics, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening an employee with unspecified adverse consequences if she acted as a spokesperson for other employees' work-related problems, threatening employees at group meetings with the loss of their jobs if they supported union activity, threatening an employee that it was a betrayal and hurtful for him to support the Union and then telling him that he "would know the best way to choose," restricting conversation about union matters during worktime while permitting conversations about other nonwork matters, keeping its employees' union activities under surveillance, and coercively interrogating them about their support for the Union, the Respondent violated Section 8(a)(1).

4. The aforementioned unlawful conduct engaged in by the Respondent constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[48]

ORDER

The Respondent, Ironwood Plastics, Inc., Ironwood, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with the loss of their jobs and other unspecified reprisals for engaging in union or other protected concerted activities, restricting employees' exercise of their Section 7 rights, interrogating employees about their support for a union, and engaging in surveillance of employees' union activities.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Ironwood, Michigan, copies of the attached notice marked "Appendix."[49] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 15, 2004.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(c) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. June 30, 2005

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten you with the loss of your job or other unspecified reprisals for supporting International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, AFL–CIO or any other union, or engaging in any other form of protected concerted activity.

WE WILL NOT restrict your Section 7 union or other protected concerted activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT engage in the surveillance of your union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

IRONWOOD PLASTICS, INC.

[48] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[49] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."